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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ANTONIO LOPEZ, individually;
JOHANNA LOPEZ, individually; M.R.,
by and through his guardian ad litem,
April Rodriguez, individually and as
successor in interest to Brandon Lopez;
B.L. and J.L., by and through their
guardian ad litem Rachel Perez,
individually and as successor in interest
to Brandon Lopez; S.L., by and through
his guardian ad litem, Rocio Flores,
individually and as successor in interest
to Brandon Lopez,

Plaintiffs,

vs.

CITY OF ANAHEIM; CITY OF
SANTA ANA; DAVID VALENTIN;
JORGE CISNEROS; PAUL
DELGADO; BRETT HEITMAN;
KENNETH WEBER; CAITLIN
PANOV; DOES 1-10,

Defendants.

Case No. 8:22-cv-1351-JVS-ADS
[Hon. James V. Selna, Dist. Judge; Hon.
Autumn D. Spaeth, M. Judge]

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' AMENDED EX
PARTE MOTION TO MODIFY
THE SCHEDULING ORDER [121]**

*Filed Concurrently with Declaration of
Abigail J.R. McLaughlin & Exhibits*

Complaint Filed: 05/07/2022
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Trial Date: 09/17/2024

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1 **1. INTRODUCTION & SUMMARY OF OPPOSITION.**

2 Defendants CITY OF ANAHEIM, JORGE CISNEROS, PAUL DELGADO,
3 BRETT HEITMAN, KENNETH WEBER, and CAITLIN PANOV (collectively
4 “Defendants”) respectfully oppose Plaintiffs ANTONIO LOPEZ and JOHANNA
5 LOPEZ’s¹ (collectively “Plaintiffs”) Amended *Ex Parte* Motion to Modify the
6 Scheduling Order for the followings reasons:

7 As an initial matter, Plaintiffs’ Amended *Ex Parte* Motion to Modify the
8 Scheduling Order is substantially similar to Plaintiffs’ previously filed *ex parte* [Dkt.
9 117], but for the fact that Plaintiffs no longer request a continuance of the pre-trial
10 conference and trial date in this matter and the requested continuance is only
11 approximately a month, rather than several months. However, this change in requests
12 does not change the fact that Plaintiffs’ requested relief should be denied and, thus,
13 Defendants re-assert their Opposition on the same bases as when they opposed
14 Plaintiffs’ original *ex parte*. [See Dkt. 118.]

15 First, Plaintiffs have failed to show that they were diligent in attempting to
16 comply with this Court’s case management deadlines in this matter. Rather, Plaintiffs
17 did not notice (or even communicate with Defendants regarding) the individual
18 defendants’ depositions, which Plaintiffs cite as a basis for the need for a continuance.
19 Additionally, Plaintiffs failed to show that they were diligent in seeking amendment
20 of this Court’s scheduling order once it became apparent Plaintiffs could not comply
21 with the order. Rather, Plaintiffs waited until less than a month prior to the fact
22 discovery cut-off in this matter to meet and confer with Defendants about a
23 continuance of all case management deadlines in this matter and during a time where
24

25
26
27 ¹ The subject *Ex Parte* Motion was also filed on behalf of Plaintiff S.L., however
28 S.L. has already settled their claims in this action with Defendants and S.L.’s *ex parte*
petition to approve minor’s compromise was approved on May 7, 2024. [Dkt. 115.]

1 the Parties' counsel were all currently in a weeks-long trial in another matter (with
2 some of Plaintiffs' counsel), which ran from April 16, 2024 to April 30, 2024.

3 Second, Plaintiffs' request for a continuance of all case management deadlines
4 in this matter (sans the pre-trial conference and trial dates) is premature and lacks
5 good cause because the Parties are scheduled to go to mediation on May 14, 2024. If
6 the Parties settle this matter, there is no need for Plaintiffs' requested relief.
7 Moreover, if the Parties cannot reach an agreement regarding settlement, Defendants
8 have repeatedly advised Plaintiffs that we are willing to revisit a stipulation for
9 continuance if a good-faith mediation fails to resolve the case. But, Defendants are
10 unwilling to agree to a stipulation to continuance *before* the May 14, 2024 mediation:
11 as Defendants are entitled to a good-faith mediation attempt to resolve this case, and
12 Plaintiffs' presumption of failure and the necessity of a continuance runs contrary to
13 the goal of good faith in settlement negotiations – particularly after Plaintiffs
14 previously cancelled a prior mediation after 5:00 p.m. the day prior to the mediation.

15 **2. RELEVANT FACTUAL AND PROCEDURAL HISTORY.**

16 On January 18, 2024, this Court granted Defendants' Motion to Continue Case
17 Management Deadlines in this matter by approximately three months, citing
18 Defendants' demonstration of diligence in pursuing some discovery and filing the
19 Motion, as well as: (1) defense counsel's unavailability for the May 14, 2024 trial
20 date; (2) the additional time needed to depose the individual defendants in this matter;
21 and (3) to allow for another mediation between the parties and a possible settlement.

22 [Dkt. 110.]²

23 _____
24 ² It is worth noting here that, before current defense counsel substituted into the
25 case, a global settlement involving *all* of the plaintiffs (including the parent plaintiffs)
26 appeared to be within reach. However, despite repeated requests, the parent plaintiffs
27 have still failed to provide any numerical counteroffer to the Anaheim Defendants'
28 last settlement offer. [See McLaughlin Decl., ¶5, Exh. B at p. 1.] Defendants are thus
understandably skeptical of the parent plaintiffs' interest in and commitment to a
good-faith settlement of this case: particularly when their counsel has not yet
(footnote continued)

1 Defendants will have completed their fact discovery in this matter by the
 2 current May 10, 2024 discovery cut-off, as Defendants took the deposition of Plaintiff
 3 Antonio Lopez on January 15, 2024; served written discovery on Plaintiffs on March
 4 4, 2024, and received responses to the same on April 29, 2024; and will be taking
 5 Plaintiff Johanna Lopez's deposition on May 8, 2024. [McLaughlin Decl., ¶2.]
 6 Notably, even after the discovery deadlines were extended, neither the settling
 7 plaintiffs nor the parent plaintiffs noticed any of the depositions of the shooting-
 8 involved Anaheim officers. [*Id.* at ¶3.]

9 Significantly, on or about March 27, 2024, the Parties (the parent plaintiffs and
 10 the Anaheim Defendants) agreed to participate in a second mediation in this matter
 11 before the Hon. Joseph Biderman on April 2, 2024 beginning at 10:00 a.m. [*Id.* at
 12 ¶4.] However, after previously confirming that such mediation would proceed, on
 13 April 1, 2024 at 5:04 p.m. (less than 24 hours prior), Plaintiffs' counsel informed both
 14 Defendants and Judge Biderman that they were "recently informed of a new conflict
 15 that one of our clients has with the scheduled mediation for tomorrow and therefore
 16 [are] not available to proceed with the mediation session." [*Id.*, Exh. A at p. 1.]

17 Though Plaintiffs remained open to a second mediation, they did not reach out
 18 about alternative dates until Defendants informed Plaintiffs that they would not agree
 19 to any continuances of the case management deadlines and trial date in this matter
 20 unless and until the mediation has been rescheduled and completed. [*Id.*, ¶5, Exh. B
 21 at pp. 7-12.] Notably, Defendants made a pre-mediation offer to Plaintiffs prior to
 22 the April 2, 2024 mediation, but never received a counter offer. [Exh. B at p. 1.]
 23

24 _____
 25 confirmed that the parent plaintiffs themselves will be attending the scheduled May
 26 14 mediation with mediator (Ret.) Judge Biderman; and particularly when, rather than
 27 focus upon laying sufficient groundwork for a productive settlement at the upcoming
 28 mediation, and possible complete resolution of the dispute, the parent plaintiffs are
 instead focused upon the instant *ex parte* and the (untimely) "need" for further
 discovery that would only be relevant/necessary if the May 14 mediation failed.

1 While the Parties currently intend to participate in mediation with Judge Biderman on
 2 May 14, 2024, due to Plaintiffs' prior last-minute cancellation of the earlier mediation,
 3 Defendants remain concerned that Plaintiffs will not attend the May 14, 2024
 4 mediation, or will not proceed in good faith to try to resolve this issue: particularly
 5 when, given the challenges for the parent plaintiffs to assert the claims that survived
 6 the other plaintiffs' settlement, the parent plaintiffs' remaining claims appear to be of
 7 lesser value than the settling plaintiffs. Thus, Defendants have repeatedly told
 8 Plaintiffs that they are unwilling to stipulate to any continuance in this matter until
 9 after the completion of a good-faith mediation as scheduled on May 14, 2024. [See
 10 *generally* Exh. B, C.]

11 On May 8, 2024, Plaintiffs informed Defendants of their intention to bring the
 12 subject Amended *Ex Parte* Motion to Modify Scheduling Order via e-mail. [Dkt.
 13 121-4 at pp. 1-2.] Despite it being pointed out in Defendants' Opposition to Plaintiffs'
 14 original *Ex Parte* Motion to Modify Scheduling Order that Plaintiffs provided an
 15 incorrect address and phone number for defense counsel in violation of C.D. Cal.
 16 Local Rule 7-19, Plaintiffs' Amended *Ex Parte* Motion still does not contain the
 17 correct address or phone number for Defendant's counsel. [Dkt. 121 at 5:9-10; *see*
 18 Dkt. 118 at 6:4-7.]

19 **3. PLAINTIFFS FAIL TO DEMONSTRATE THE NECESSARY**
 20 **DILIGENCE TO SUPPORT THEIR REQUEST FOR MODIFICATION**
 21 **OF THE SCHEDULING ORDER.**

22 "[D]istrict judges have broad discretion to manage discovery and to control the
 23 course of litigation under Federal Rule of Civil Procedure 16." *Avila v. Willits Env't*
 24 *Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011). In general, the pretrial
 25 scheduling order can only be modified "upon a showing of good cause." *Zivkovic S.*
 26 *Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2022) (quoting *Johnson v. Mammoth*
 27 *Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992)); *accord* Fed. R. Civ. P. 16(b)(4).
 28 "The pretrial schedule may be modified 'if it cannot reasonably be met despite the

1 diligence of the party seeking the extension,” but “[i]f the party seeking the
 2 modification ‘was not diligent, the inquiry should end’ and the motion to modify
 3 should not be granted.” *Zivkovic*, 302 F.3d at 1087 (quoting *Johnson*, 975 F.3d at
 4 609); *see also Eckert Cold Storage, Inc. v. Behl*, 943 F. Supp. 1230, 1233 (E.D. Cal.
 5 1996) (holding that “the focus of the Rule 16 ‘good cause’ inquiry is on the moving
 6 party’s diligence, or lack thereof, in seeking amendment”).

7 Accordingly, to demonstrate diligence, the moving party is required to show:
 8 (1) that it was diligent in assisting the Court in creating a workable Rule 16 scheduling
 9 order; (2) that its noncompliance with the scheduling order’s deadline occurred or will
 10 occur notwithstanding diligent efforts to comply because of “the development of
 11 matters which could not have been reasonably foreseen or anticipated at the time of
 12 the Rule 16 scheduling conference;” and (3) that it was diligent in seeking amendment
 13 of the scheduling order once it became apparent it could not comply with the order.
 14 *Jackson v. Laureate, Inc.*, 186 F.R.D. 605, 608 (E.D. Cal. 1999).

15 Here, **Plaintiffs have demonstrated an utter lack of diligence in pursuing**
 16 **discovery in this matter** despite the current May 10, 2024 fact discovery cut-off.
 17 Plaintiffs state that they have “been diligently pursuing discovery in this case,”
 18 including “propound[ing] significant written discovery.” [Dkt. 117 at 6:26-7:1.] Yet,
 19 Plaintiffs’ last written discovery to Defendants was served on November 17, 2023,
 20 prior to the Court’s Order extending the case management deadlines in this matter per
 21 Defendants’ request. Additionally, Plaintiffs have utterly failed to notice or
 22 communicate with Defendants about the depositions of the individual defendant
 23 officers in this matter, despite being on notice of the approaching May 10, 2024 fact
 24 discovery cut-off; this is especially true given the Defendants’ scheduling of Plaintiff
 25 Johanna Lopez’s deposition on May 8, 2024. [See McLaughlin Decl., ¶¶3, 7, Exh. D.]

26 Moreover, Plaintiffs’ counsel were aware of both Parties’ counsel’s trial
 27 conflict from April 16, 2024 to April 30, 2024 (for the *Nunis* trial involving most of
 28 the same counsel) since on or about July 13, 2023. [McLaughlin Decl., ¶8.] Thus,

1 when the Court granted Defendants’ request for continuance on January 18, 2024,
 2 Plaintiffs’ counsel, like Defendants’ counsel, were well-aware of the immovable
 3 scheduling conflict created by this trial (*Nunis*) and could have reached out about the
 4 individual defendants’ depositions at any point in the approximately three (3) months
 5 preceding that conflict; and yet, Plaintiffs did not do so. [*See id.*, ¶3.]

6 Additionally, Plaintiffs attempt to blame Defendants for their need to bring the
 7 subject *ex parte*. However, it is clear that it is Plaintiffs’ own lack of diligence that is
 8 to blame. Plaintiffs claim that they sought a stipulation to continue the case
 9 management deadlines in this matter to avoid the additional costs of depositions and
 10 retaining experts. Yet, as stated above, Defendants have completed their fact
 11 discovery in this matter and the Parties’ expert disclosures are not due until after the
 12 May 14, 2024 mediation. Thus, if the Parties come to a settlement on May 14, the
 13 need for *any* discovery would be mooted. Additionally, as stated by Defendants, once
 14 mediation occurs, Defendants are willing to revisit a continuance of case management
 15 deadlines in this matter, which would necessarily include the expert disclosure
 16 deadline. [*See* Dkt. 110 (setting initial disclosure of experts as “not later than May
 17 17, 2024”).]

18 Significantly, Plaintiffs’ lack of diligence also applies to Plaintiffs’ last-minute
 19 *ex parte* regarding this matter. Plaintiffs attempt to blame Defendants for a change in
 20 position. Yet, Defendants repeatedly told Plaintiffs their concerns about any
 21 continuance in light of the lack of re-scheduling the second mediation in this matter.
 22 [*See generally* Exh. B, C.] Furthermore, Plaintiffs waited until the Parties’ trial
 23 counsel were in the middle of another trial (*Nunis*) to request that Defendants stipulate
 24 to a continuance. [*See* Dkt. 117 at 1:22-2:8.] As discussed above, Plaintiffs’ counsel
 25 knew that the Parties’ counsel was in trial (Mr. Sain, Ms. Bakken, Mr. Lacy, Ms.
 26 Andrews, and Ms. Quesada were all in trial together in San Diego for about 3 weeks)
 27 and Plaintiffs could have reached out about a continuance and/or filed the appropriate
 28 motion to obtain the continuance Plaintiffs now desire at a time that did not conflict

1 with that other matter (*Nunis*); and yet Plaintiffs did not do so. Instead, Plaintiffs
 2 waited until three (3) days before the fact discovery cut-off in this matter to seek such
 3 a continuance.

4 Accordingly, Plaintiffs' alleged need to continue the case management
 5 deadlines in this matter is created solely through their lack of diligence; and thus the
 6 Court should deny Plaintiffs' *ex parte* in its entirety for lack of diligence/good cause.

7 **4. PLAINTIFFS' REQUEST FOR CONTINUANCE OF THE CASE**
 8 **MANAGEMENT DEADLINES IN THIS MATTER IS PREMATURE &**
 9 **LACKS GOOD CAUSE.**

10 As stated above, the Parties are scheduled to attend mediation in this matter on
 11 May 14, 2024. Due to Plaintiffs' prior last-minute cancellation of mediation,
 12 Defendants are rightfully concerned about Plaintiffs repeating this same evasion of
 13 good-faith settlement after obtaining their requested continuance of all case
 14 management deadlines and the trial date in this matter. If Defendants stipulated to
 15 Plaintiffs' requested continuance prior to the Parties completing in good faith the May
 16 14, 2024 mediation and then Plaintiffs again cancelled such mediation, such
 17 stipulation would effectively reward Plaintiffs for their lack of diligence in discovery
 18 in this matter while providing no benefit to Defendants; who, as discussed, are in
 19 compliance with the Court's current case management deadlines.

20 If the Parties are able to reach a settlement on May 14, then Plaintiffs' request
 21 for continuance of the case management deadlines in this matter is mooted. If the
 22 Parties are not able to reach a settlement, Defendants are willing to revisit a stipulation
 23 for a continuance of all case management deadlines in this matter in that unlikely
 24 event. As a result, there is no prejudice to Plaintiffs if the subject *ex parte* is denied.
 25 Plaintiffs' purported "urgency" is of their own making and there is thus no good cause
 26 basis for the Court to grant the extraordinary relief requested at this time.

27 Indeed, the moving plaintiffs utterly fail to show why their requested relief
 28 would result in undue prejudice absent hearing shorter than a noticed motion. Surely,

1 if the May 14 mediation fails, Plaintiffs could then bring a regularly-noticed motion
2 seeking leave to “reopen” discovery and push out all of the related deadlines. When
3 mediation on May 14 may very well completely resolve the case – assuming the
4 parent plaintiffs are in attendance and all parties enter such mediation in a good faith
5 attempt to resolve the dispute – Plaintiffs cannot establish the requisite good cause,
6 and/or irreparable prejudice, which is a threshold requirement for establishing the
7 necessity of ex parte relief. *Cervantes v. Zimmerman*, 2020 U.S. Dist. LEXIS 1498
8 at *3 (S.D. Cal., Jan. 6, 2020) (citing *in re Intermagnetics America, Inc.*, 101 B.R.
9 191, 193 (C.D. Cal. 1989)).

10 For the foregoing reasons, Plaintiffs’ *ex parte* should be denied for lack of good
11 cause.

12 **5. CONCLUSION.**

13 Based on the foregoing, Defendants respectfully request that Plaintiffs’
14 Amended *Ex Parte* Motion to Modify the Scheduling Order be denied *in its entirety*.

15
16 DATED: May 10, 2024

LEWIS BRISBOIS BISGAARD & SMITH LLP

17
18
19 By: /s/ Abigail J.R. McLaughlin

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FEDERAL COURT PROOF OF SERVICE
LOPEZ, ANTONIO, et al. v. CITY OF ANAHEIM, et al.
Case No. 8:22-cv-1351

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On May 10, 2024, I served the following document(s): DEFENDANTS' OPPOSITION TO PLAINTIFFS' AMENDED EX PARTE MOTION TO MODIFY THE SCHEDULING ORDER [DKT. 121]

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on May 10, 2024, at Los Angeles, California.

/s/ Corinne Taylor
Corinne Taylor

SERVICE LIST
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Case No. 8:22-cv-1351

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